

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

NICHOLAS CORTEZ ADDISON

PLAINTIFF

v.

3:15CV00027-DPM-JJV

BRETT DUNCAN, Jailer; *et al.*

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge D. P. Marshall Jr. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before either the District Judge or Magistrate Judge, you must, at the time you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence to be proffered at the new hearing (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The details of any testimony desired to be introduced at the new hearing in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial

evidence desired to be introduced at the new hearing.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing. Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

Nicholas Cortez Addison (“Plaintiff”) filed this action alleging that the conditions of his confinement at the Craighead County Detention Center were constitutionally inadequate. (Doc. No. 2 at 3-4.) He named Brett Duncan and Matt Hall as Defendants to this action, but never explained how either was personally involved in the violations he alleges. (*Id.*) On April 22, 2015, the Court apprised Plaintiff of this deficiency and provided him with an opportunity to amend his Complaint in order to explain each Defendant’s involvement. (Doc. No. 10 at 2.) The Court also warned him that this action would be recommended for dismissal without prejudice if he failed to amend within thirty days. (*Id.* at 4-5.) To date, Plaintiff has not filed an amended complaint or otherwise clarified his allegations against the named Defendants. It is settled law that an action fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Here, Plaintiff has failed to raise a plausible claim and this action should be dismissed on that basis.

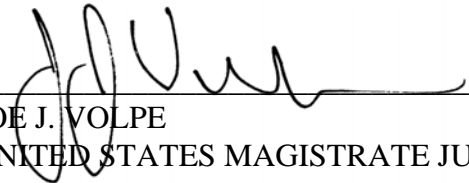
IT IS, THEREFORE, RECOMMENDED that:

1. Plaintiff’s Complaint (Doc. No. 1) be DISMISSED without prejudice.
2. Dismissal of this action count as a “strike” for purposes of 28 U.S.C. § 1915(g).¹

¹Title 28 U.S.C. § 1915(g) provides that: “In no event shall a prisoner bring a civil action or appeal a judgment in a civil action under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of

3. The Court certify, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from an Order adopting these recommendations would not be taken in good faith.

Dated this 15th day of June, 2015.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE

the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted”